SUPREME COURT OF THE UNITED STATES.

No. 366.

THE WASHINGTON AND GEORGETOWN RAILROAD COMPANY, PLAINTIFFS IN ERROR,

vs.

MARIA J. HUTTON.

IN ERROR TO THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

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1 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the chief justice and justices of the supreme court of the District of Columbia, greeting:

Because in the record and proceedings, as also in the rendition of of a judgment in a plea which is in the said court before you, between Maria J. Hutton, plaintiff, and the Washington and Georgetown Railroad Company, defendant, a manifest error hath happened to the great damage of the said defendant, as by its complaint appears; and it being fit that the error, if any hath happened, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf; therefore you are hereby commanded, if judgment be therein given, under your seal, distinctly and openly, to send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with writ, so that you have the same at Washington on the first Monday of December next, in the said Supreme Court to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the law and custom of the United States should be done.

Witness the honorable Salmon P. Chase, Chief Justice of the United States, this 4th day of June, in the year of our Lord 1866, and of the independence of the United States the 90th.

[L. S.] R. J. MEIGS, *Clerk.*

DISTRICT OF COLUMBIA, *to wit:*

To Maria J. Hutton:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the first Monday of December next, pursuant to a writ of error filed in the clerk's office of the supreme court of the District of Columbia, wherein the Washington and Georgetown Railroad Company is plaintiff and you are defendant, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected, so that speedy justice be done the parties in that behalf.

Witness David K. Cartter, chief justice of the said supreme court of the District of Columbia.

D. K. CARTTER, *Ch. Justice.*

We acknowledge service of this citation.
June 4, 1866.

BRENT & MERRICK,
For Def't in Error.

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3 DISTRICT OF COLUMBIA, *to wit:*

As commanded by the foregoing writ of error, I, Return J. Meigs, clerk of the supreme court of the District of Columbia, do hereby

certify and transmit to the Supreme Court of the United States a true copy of the record and proceedings mentioned in said writ of error, with all things touching the same, which copy is hereto annexed.

In testimony whereof I have caused the seal of the said supreme court of the District of Columbia to be hereto affixed, at the city of Washington, this 4th day of June, 1866.

[L. S.]

4 *Declaration.—Filed 30th Nov.*, 1865.

Supreme court of the District of Columbia, 30th November, 1865.

Maria J. Hutton complains of the Washington and Georgetown Railroad Company in a plea of the case: For that whereas the defendant is duly incorporated by act of Congress approved March 17th, 1862; and whereas upon and after the time of committing the grievances hereinafter mentioned the defendant was the proprietor of a certain street railroad car used by the defendant in carrying passengers from Georgetown, in the District of Columbia, to the depot of the Baltimore and Ohio Railroad Company in said District for hire and reward to the defendant, to wit, on the sixteenth day of November, in the year eighteen hundred and sixty-five, at Washington city, in the District of Columbia, and the defendant being such proprietor on the same day and year last aforenamed at the city aforesaid, received the plaintiff into the said street railroad car as a passenger, to be carried and conveyed as such from the corner of Sixth street
5 west and Pennsylvania avenue, in said Washington city, to the depot of the Baltimore and Ohio Railroad Company, also in said city, for reward to the defendant, and that by reason thereof it became and was the defendant's duty to use due care in causing the plaintiff to be conveyed from the said corner of Sixth street west and Pennsylvania avenue to the aforesaid depot of the Baltimore and Ohio Railroad Company, as such passenger by the said railroad car. Yet the defendant, not regarding the duty of the said corporation in that behalf, did not, nor would use due care in causing the plaintiff to be conveyed from the aforesaid corner of Sixth street west and Pennsylvania avenue to the aforenamed depot as such passenger by said car. And then and there the said corporation, by the agents and servants thereof, did so carelessly and negligently drive the horses attached to the said street railroad car that they came into collision with a certain other car, the property of another corporation, called the Washington, Alexandria, and Georgetown Railroad Company, the track of which railroad crosses the track of the
6 defendant's street railroad company in Washington city, and in the District aforesaid, and the car in which the plaintiff was riding, by and in consequence of the said collision, and the plaintiff was unavoidably trampled upon and greatly hurt by divers other passengers in the said car, and was then and there greatly bruised, hurt, and wounded, externally and internally, and became, and was sick, sore, lame, and disordered, and hath so remained from

thence hitherto, to wit, at the said city of Washington in said District of Columbia, and during all which time the plaintiff hath suffered great pain and anguish, and thereby the plaintiff during all the said time has been prevented from carrying on and transacting her necessary affairs and business, and in consequence thereof has lost and been deprived of divers gains and profits which otherwise would have accrued to her, and thereby also the plaintiff was necessarily subjected to, and incurred divers expenses, to wit, to the amount of one thousand dollars, in endeavoring to be cured of said wounds, injuries, sickness, soreness, lameness, and disorder incidental thereto.

7 and to great and extraordinary expenses in providing herself with board, lodging, physicians, medicines, and other necessaries, and was and is otherwise damaged, to wit, in the sum of ten thousand dollars, and therefore she brings this suit.

Washington, November 30th, 1865.

WM. LILLEY,
JOHN JOLIFFE,
Of Counsel for Plaintiff.

In the supreme court of the District of Columbia, the 30th day of Nov'r, 1865.

MARIA J. HUTTON, plaintiff,
vs.
THE WASHINGTON AND GEORGETOWN RAILROAD CO., defendant. } At law, No. 2,098.

The President of the United States to the marshal for said District, greeting:

Summon the defendant in the above-entitled case to appear in said court on or before the first special term thereof occurring twenty days after service of this writ, and answer the declaration herewith

8 served; and warn him that, on default of so doing, the plaintiff may proceed to judgment and execution at the trial term of said court next after said service. And do you return this writ into the clerk's office immediately after service, so indorsed as to show the time and manner of executing it; and if you cannot serve it within six months, the day of its issuance exclusive, then return it into said office for renewal.

Witness:

D. K. CARTTER,
Chief Justice of said Court.
R. J. MEIGS, *Clerk.*

LILLY & JOLLIFF.

NOTE.—That the special terms of the court commence on the first Tuesday of every month except May, in which month they commence on the third Monday, and August, in which month there is no term of the court; and that the trial terms of the court commence on the first Tuesday of February, third Monday of May, and first Tuesday of November, when final judgments may be taken and execution awarded.

Marshal's indorsement.

"Served copy of sums. and decl." on G. S. Gideon, pr. of the road.

D. S. GOODING, *Marshal.*"

Dec. 2, '65.

9 *Deft's plea.—Filed 2d Jan.* 1866.

Supreme court, D. C., Jan. 2, 1866.

MARIA J. HUTTON.
vs.
WASHINGTON AND GEORGETOWN RAILROAD CO. } At law, No. 2,098.

The defendants say they are not guilty as alleged.

BRADLEY & BRADLEY,
For Defendant.

Order to place on calendar.—Filed 2d Feb., '66.

Supreme court, Dist. Col.

MARIA J. HUTTON
vs.
WASHINGTON AND GEORGETOWN STREET R. R. CO. } No. 2,098.

It is agreed that this case shall be placed on the calendar for trial February term, 1866.

[L. S.]

DURBIN WARD,
Att'y for Pl't'ff.
BRADLEY & BRADLEY,
Atts. for Def't's.

10 Proceedings before the supreme court of the District of Columbia, holding a special term and circuit court for said district, commencing the first Tuesday of February, 1866, in pursuance of the rule of court.

WEDNESDAY, *April* 25, 1866.

The court resumes its session according to adjournment, Justice Olin, presiding.

MARIA J. HUTTON
v.
THE WASHINGTON AND GEORGETOWN RAILROAD Company. } 2,098, law.

Come, as well as the plaintiff, by her attorneys, Messrs. Merrick and Riddle, as the defendant, by its attorneys, Messrs. Bradley and Davidge; and thereupon comes a jury of good and lawful men of this district, to wit: John P. Murphy, Charles W. Pettit, Edward H.

Edelin, William H. Goods, William O'Neale, Thomas E. Jacobs, Joseph Dudley, Rodney O'Brien, James K. Plant, John P. Hall, David E. Kealy, and William Hughes, who, being sworn to try the issue above joined, are respited till ten o'clock to-morrow morning.

11 MONDAY, *May* 7, 1866.

The court resumes its session according to adjournment, Justice Olin presiding.

MARIA J. HUTTON
v.
THE WASHINGTON AND GEORGETOWN RAILROAD Company. } 2,098, law.

And now again come here the parties aforesaid, by their attorneys aforesaid, and the same jury to whom the case was submitted on Saturday, and who, upon their oath say that they find the issue joined in favor of the plaintiff, and assess her damages, by reason of the premises, at three thousand dollars, besides costs.

12 *Bill of exception.*

In the supreme court of the District of Columbia.

MARIA HUTTON
v.
THE WASHINGTON AND GEORGETOWN Railroad Co. } In the circuit court, No. 2,098, at law.

On the trial of this cause the plaintiff, to maintain the issue on her part joined, gave evidence tending to show that shortly before six o'clock of the morning of the 16th November, 1865, she took a passage and paid her fare therefor in one of the passenger cars drawn by a pair of horses belonging to the defendants, who are admitted to be a company duly incorporated to run lines of passenger cars drawn by horses from a point in Georgetown along Pennsylvania avenue, &c., to the navy yard, in Washington city; that plaintiff got in the cars on Pennsylvania at 6th street west, to go to the station house of the Baltimore and Ohio Railroad Company, and proceeded along Pennsylvania avenue until the said car reached the crossing of First street west and Pennsylvania avenue, at which point the said track of defendants is crossed at right angles, or nearly so, by

13 another, on which steam was used as the propelling power, and which passed along said First street, west; that as the hinder part of defendants' car, in which was plaintiff, was crossing the last-mentioned track, it was struck by a train of cars driven by steam, was thrown from the track, and thereby the plaintiff was seriously injured in the collision; that there was light enough for the driver and conductor of the defendants' car to have seen the approach of the steam train in time to have avoided the collision if they had used ordinary care and diligence; besides which, the approach of that train was signalled by a bell, which was on the engine, and

by the rolling of the cars, which could be heard at the distance of several squares, and was heard by persons much more remote from the place of collision than the defendants' cars were for some minutes before the collision, and the ringing of said bell was continued up to the moment of the said collision; and the approach of the steam train before it struck the horse car was seen by persons at a distance of two hundred yards from the place of said collision.

14 And thereupon the defendants gave evidence tending to show that the driver and conductor of their said car were careful, prudent, and skilful persons, who had for many months prior to the said collision been in charge of defendants' car, and every morning at the same time, not varying more than a minute for many months prior to said collision, passed the crossing of said roads, and on that morning were in the act of passing at the said hour and minute, as nearly as could reasonably be attained, as they had theretofore, the crossing of the said roads when the said passenger car was struck by a train driven by steam, and backing, going north along the centre of said First street west; that prior to that morning no steam train had ever passed the said crossing at or near the said hour and minute, which was about five minutes before six, nor had the said driver or conductor ever seen a steam train passing the said crossing at any hour in the morning; that the morning was very foggy, and particularly so at the foot of the Capitol Hill, and among the trees growing there, and it was impossible to see

15 any object beyond the range of the lights in said passenger car; that the said passenger car was well lighted, and the sides thereof, above the backs of the seats, were glass, with only small sashes between them; that the approach of the steam-car was not noticed, and could not have been perceived by the driver or conductor until it was within forty or fifty feet, and within the range of the light from the horse-car; that when the said steam train was first discovered by the driver or conductor, the horses of the horse-car were on the track of the crossing, and the driver instantly struck his horses, and they hurried forward; but the foremost car of the steam-train, as it was backed, struck the horse car near the hinder part of the same, and recoiled and struck it a second time. and by the second blow the horse car was thrown from its track into a position almost parallel with the steam train, was overturned and broken to pieces, and the impetus of the steam train was such as to carry the first and half of the second car of that train beyond the point of collision; that the steam train carried no light; and if it rang any bell, the sound did not reach the horse passenger train, or the pas-

16 sengers inside, or on the platform thereof; nor was the rumbling of the steam train heard by any one on the horse train, many of whom were examined. They further gave evidence to show that the driver was on the look-out at the time, and before and up to the time of the said collision; that the steam train was behind its time about five minutes; and, finally, at the time of the collision, and when the steam train was first seen or heard by the driver of the horse-car, it would have been impossible to have backed the horse-car from the track in time to avoid the collision.

Def'ts exceptions to the judge's charge to the jury.

The defendants pray leave to except, and do except, to so much and such part of the charge of the judge to the jury as submits to the jury to inquire and ascertain whether the agents of the defendants "ought" to have seen the danger of the collision between the car of defendants and the car drawn by steam in time to have prevented the said collision.

A. B. OLIN,
Justice Sup. Ct., D. C.

17 MARIA HUTTON
v.
WASHINGTON AND GEORGETOWN RAILROAD COMPANY.

The defendant moves the court for a new trial in the above-entitled cause, and assigns therefor as reasons:

First. That the court erred in the several rulings made on the trial of said cause in rejecting and in receiving evidence therein as set out in the bills of exception taken by the said defendants on the trial of the said cause.

18 Proceedings before the supreme court of the District of Columbia, holding a general term, commencing the first Monday of May, in the year 1866.

MONDAY, *June 4th*, 1866.

The court resumes its session according to adjournment: Present, Chief Justice Cartter, and Justices Olin, Fisher, and Wylie.

MARIA J. HUTTON
v.
THE WASHINGTON AND GEORGETOWN Railroad Company. } 2,098.—Law.

And now again come here the parties aforesaid, by their attorneys aforesaid, and because it seems to the court here that in the record and proceedings of the circuit court there is no error as alleged by the defendant; therefore it is considered that the plaintiff recover against the defendants three thousand dollars, the damages aforesaid, in manner and form aforesaid assessed, and $ for her costs of suit, and she have execution thereof.

O